Department of the Treasury
Internal Revenue Service
Instructions for Form 5330

(Revised March 1979)

Return of Initial Excise Taxes Related to Pension and Profit-Sharing Plans

(Section references are to the Internal Revenue Code of 1954 unless otherwise specified)

General Information

Who Must File.—A Form 5330 must be filed by:

(1) any employer who fails to meet the minimum funding standards under section 412 (for liability for tax in case of an employer who is party to a collective bargaining agreement see section 413 (b)(6)); or

(2) any individual with respect to whom there has been made an excess contribution to a 403(b)(7)(A) custodial account and which excess has not been eliminated as specified in section 4973 (c)(2)(A) and (B); or

(3) any disqualified person who participates in a prohibited transaction (other than a fiduciary acting only as such or an individual (or his beneficiary) who engages in a prohibited transaction with respect to his individual retirement account) for each taxable year or part thereof in the "taxable period" applicable to such prohibited transaction; or

(4) any self-employed individual or partnership who has made excess contributions to their Keogh (H.R. 10) pension or profit-sharing plan.

This return provides a means for determining the tax imposed under section 4971 on an employer upon the failure to meet the minimum funding standards of section 412, under section 4973(a)(2) on an individual making an excess contribution to section 403(b) (7)(A) custodial accounts, under section 4972 on self-employed individuals making excess contributions to their Keogh (H.R. 10) plans and under section 4975 (a) on a disqualified person participating in prohibited transactions occurring after December 31, 1974. In addition section 2003(c)(1)(B) of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as ERISA) allows disqualified persons to elect to have section 4975 apply to certain pre-January 1, 1975, transactions to avoid loss of exempt status by the trust.

The payment of tax and filing of Form 5330 is required for each year in which you fail to meet the minimum funding standards under section 412 or contribute an excess amount to your 403(b)(7)(A) custodial account or your Keogh (H.R. 10) plan. The payment of tax and filing of Form 5330 is also required for each year (or part thereof) in the "taxable period" applicable to a prohibited transaction. Generally the "taxable period" begins with the date of the prohibited transaction and ends with the earlier of: (i) the date correction is completed or (ii) the date of mailing of a notice of deficiency.

Definitions

A. Plan.—For purposes of these definitions, the term "plan" means a trust described in section 401(a) which forms part of a plan, or a plan described in section 403(a) or 405(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) or a retirement bond described in section 409. For purposes of the tax on minimum funding deficiencies and prohibited transactions, a trust, plan, account, annuity, or a bond which, at any time, has been determined by the Internal Revenue Service to be a trust, plan, account, annuity or bond as described in the preceding sentence is a plan subject to these taxes.

B. Disqualified Person.—A "disqualified person" is any person who is:

(1) a fiduciary;

(2) a person providing services to the plan;

(3) an employer any of whose employees are covered by the plan;

(4) an employee organization any of whose members are covered by the plan;

(5) an owner, direct or indirect, of 50% or more of—*(a)* the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, *(b)* the capital interest or the profits interest of a partnership, or *(c)* the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in (3) or (4);

(6) a member of the family of any individual described in (1), (2), (3), or (5) (member of a family is the spouse, ancestor, lineal descendant, and any spouse of a lineal descendant);

(7) a corporation, partnership, or trust or estate of which (or in which) 50% or more of the interest described in (5)(a), (b), and (c) is owned directly or indirectly, or held by persons described in (1), (2), (3), (4), or (5);

(8) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10% or more shareholder, or highly compensated employee (earning 10% or more of the yearly wages of an employer) of a person described in (3), (4), (5), or (7); or

(9) a 10% or more (in capital or profits) partner or joint venturer of a person described in (3), (4), (5), or (7).

C. Prohibited Transaction.—Means any direct or indirect:

(1) (a) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(b) transfer of real or personal property by a disqualified person to a plan where the property is subject to a mortgage or similar lien placed on the property by the disqualified person within 10 years prior to the transfer or the property transferred is subject to a mortgage or similar lien which the plan assumes;

(2) lending of money or other extension of credit between a plan and a disqualified person;

(3) furnishing of goods, services, or facilities between a plan and a disqualified person;

(4) transfer to, or use by or for the benefit of, a disqualified person of income or assets of a plan;

(5) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

(6) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

D. Exemptions.—The prohibitions provided in C above shall not apply to:

(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—*(a)* is available to all such participants or beneficiaries on a reasonably equivalent basis, *(b)* is not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees, *(c)* is made in accordance with specific provisions regarding such loans

set forth in the plan, *(d)* bears a reasonable rate of interest, and *(e)* is adequately secured;

(2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

(3) any loan to a leveraged employee stock ownership plan (as defined in section 4975(e)(7)), if—*(a)* such loan is primarily for the benefit of participants and beneficiaries of the plan, and *(b)* such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in section 4975(e)(8));

(4) the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—*(a)* the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or *(b)* such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investments;

(5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is— *(a)* the employer maintaining the plan, or *(b)* a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—*(a)* such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and *(b)* the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary or his delegate after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—(i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary or his delegate, but only if the plan receives no less than adequate consideration pursuant to such conversion;

(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—*(a)* the transaction is a sale or purchase of an interest in the fund, *(b)* the bank, trust company, or insurance company receives not more than reasonable compensation, and *(c)* such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of ERISA (relating to allocation of assets); or

(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction).

The preceding exemptions (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379), a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409), and an employer or association of employees which establishes such an account or annuity under section 408 (c) shall be deemed to be an owner-employee. In addition, section 2003(c)(2) of ERISA contains rules which delay the application of section 4975 for certain arrangements in effect on June 30, 1974. Furthermore, the Internal Revenue Service pursuant to section 4975(c)(2), exempted certain other transactions or classes of transactions.

General Instructions

A. When and Where to File.—

(1) For taxes due other than tax resulting from an election to be taxed under section 2003(c)(1)(B) of ERISA, this re-

turn is to be filed on or before the last day of the seventh month after the end of the taxable year of the employer or other person who must file this return. However, you may be granted an extension of time to file this return if the request is made in writing on or before the due date for filing this return. Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, may be used to request this extension. Such extension shall not exceed six months.

(2) For tax due resulting from an election to be taxed under section 2003(c)(1)(B) of ERISA, this return is to be filed prior to 120 days after the date of notification, pursuant to section 1.503(a)–1(c) of the income tax regulations, that the trust shall not be exempt from taxation under section 501(a) because it engaged in a pre-1975 prohibited transaction.

Note: *If you have elected an extension of time to make contributions to your plan under section 412(c)(10) and such extension is to a date later than the due date for filing this Form 5330, then you are automatically granted an extension of time to the same date for filing Form 5330 and paying the 5% tax on the funding deficiency.*

This return should be filed with the Internal Revenue Service Center where you filed your income tax return.

B. Name, Address, etc.—The name of the employer or the name of the individual on whom the tax is imposed should appear on the line designated on page 1. If an employer is filing this return the employer's identification number should be entered to the right of the name in the space indicated. If an individual (other than a sole-proprietor filing as an employer) is filing this return the individual's social security number should be entered to the right of the name in the space indicated.

C. Signature of Preparer.—If someone fills out your return and does not charge you, that person should not sign your return. For example, your regular, full time employee or your partner in business does not have to sign. (This list is not all inclusive.)

Generally, anyone who is paid to prepare your tax return must sign your return and fill in the other blanks in the Paid Preparer Information area of your return.

Reminders

Penalties and Interest

A. Interest.—Interest will be charged on taxes not paid on or before their due date, even if an extension of time to file is granted.

B. Late Filing of Return.—The law provides a penalty of from 5 percent to 25 percent of the tax due for filing late unless you can show reasonable cause for the delay. If you file a return late, attach an explanation to your return.

C. Late Payment of Tax.—The penalty for not paying tax when due is ½ of 1 percent of the unpaid amount for each month or part of a month it remains unpaid. The maximum penalty is 25 percent of the unpaid amount. The penalty applies to any unpaid tax shown on a return. It also applies to any additional tax shown on a bill if it is not paid within 10 days from the date of the bill. This penalty is in addition to the applicable interest charge on late payments.

Specific Instructions

Part I

If your plan has an accumulated funding deficiency as defined in section 412 complete lines 1 and 3. Complete line 2 only if the alternative minimum funding standard account is used. (See Schedule B (Form 5500) and Form 5500, Form 5500–C or Form 5500–K, whichever is applicable.)

Part II

Line 5.—The amount excludable for your taxable year is the lesser of:

(a) The exclusion allowance which is the excess of: (i) 20% of your compensation includible in gross income (do not include any amount contributed by your employer for your annuity) from your employer, multiplied by the number of years of service as of the end of your taxable year for which you are computing this exclusion allowance over, (ii) the aggregate of the amounts which have been contributed by your employer and excludable from your gross income in prior years; or

(b) The annual employer contribution limitation. Since most tax-sheltered annuities are defined contribution plans the limitation is the lesser of:

(1) $25,000 (subject to adjustment annually to consider increases in the cost-of-living) or;

(2) 25% of the employee's compensation for the year.

For defined benefit plans see section 415(b).

If you are an employee of an educational institution, hospital or home health service agency, you may elect alternative limitations under section 415(c)(4)(A), (B) or (C).

Part III

Note: *Section 141.4975–13 of the Temporary Excise Tax Regulations provides that, until superseded by permanent regulations under sections 4975(f)(2), (4), (5) and (6), the definitions of "taxable period," "amount involved," "correction" and "correction period" found in section 53.4941(e)–1 of the Foundation Excise Tax Regulations will be controlling.*

Line 13(a), Column a.—List all prohibited transactions that took place during the current taxable year as well as all prohibited transactions that took place in prior taxable years and remained uncorrected on any day of the current taxable year.

Column c.—*Amount involved in prohibited transaction.*—The "amount involved" with respect to a prohibited transaction means the greater of the amount of money and fair market value of the other property given or the amount of money and the fair market value of the other property received except that, in the case of services described in (2) and (10) of the list of exemptions the amount involved shall be only the excess compensation. Fair market value shall be determined as of the date on which the prohibited transaction occurs. Where the use of money or other property is involved, the amount involved shall be the greater of the amount paid for such use or the fair market value of such use for the period for which the money or other property is used. Further, transactions involving the use of money or other property will be treated as giving rise to a prohibited transaction occurring on the date of the actual transaction plus a new prohibited transaction on the first day of each succeeding taxable year or portion of a succeeding taxable year which is within the "taxable period." The "taxable period" is the period of time beginning with the date of the prohibited transaction and ending with the earlier of: (i) the date correction is completed or (ii) the date of mailing of a notice of deficiency. See instruction for line 20 as to the definition of "correction."

Example: *Disqualified person borrows money from a plan. The fair market value and actual interest on the loan is $1,000 per month. The loan was made on July 1, 1976, and repaid on December 31, 1977, (date correction is completed). The disqualified person's taxable year is the calendar year. From the above facts the "taxable period" for the first prohibited transaction runs from July 1, 1976, through December 31, 1977. The "taxable period" for the second prohibited transaction runs from January 1, 1977, through December 31, 1977. The Form 5330 must be filed for the taxable years 1976 and 1977. The amount involved to be reported on the Form 5330 filed for the taxable year 1976, is $6,000 (6 months × $1,000). The amount involved for the Form 5330 filed for the taxable year 1977 is $6,000 for the first prohibited transaction which occurred on July 1, 1976, and $12,000 (12 months × $1,000) for the second prohibited transaction which is deemed to have occurred on January 1, 1977. Therefore, item 13 of Form 5330 would be completed in the following manner:*